

## **RESOLUTION NO \_\_\_\_\_**

**WHEREAS**, Section 552.133 of the Texas Government Code provides an exception to the Texas Public Information Act for documents containing certain information relating to Austin Energy that the City Council determines in good faith to be “competitive” in nature, that is, which would, if disclosed, give advantage to competitors in the electric market; and

**WHEREAS**, on December 1, 2005, the City Council adopted Resolution No. 20051201-002, which among other things set forth those categories of information the council deemed competitive under Section 552.133 and also imposed certain reporting requirements upon the City Manager regarding Austin Energy; and

**WHEREAS**, there are generally increased efforts by governmental bodies that contemplate increasing the transparency of municipal utility data and required information reporting, such as the U.S. Federal Energy Regulatory Commission’s Docket No. RM10-12-000 and the Public Utility Commission of Texas’ efforts to address disclosure of generator data; and

**WHEREAS**, Austin City Council is the public power utility governing body of Austin Energy and has exclusive authority, per Section 552.133(a) of the Texas Government Code, to determine what information is a confidential “competitive matter” that can be withheld from the customer-owners of Austin Energy; and

**WHEREAS**, the principles of open government and public disclosure require that any exceptions to these principles be allowed only to the extent necessary to accomplish the goal of maintaining the electric utility’s ability to operate in the public’s best interest and that any exceptions be limited in duration and mitigated to the fullest extent possible by other means of public reporting; and

**WHEREAS**, the City Council strongly believes in public process and open government and, through transparency hearings before the Electric Utility Commission, has received significant input from a diverse cross-section of citizens who believe that the interests of the community would be best served by an open and transparent release of utility information;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

1. **AUSTIN ENERGY INFORMATION IS PRESUMED TO BE PUBLIC:** All electric utility information shall be presumed to be open to the public unless a

specific exemption is made by City Council or is provided by a law other than Texas Government Code §551.133.

2. **EXCEPTIONS TO DISCLOSURE:** The City Council, in the exercise of good faith, and subject to paragraphs 3 and 4 below, hereby determines that the information listed on Exhibit A to this resolution constitutes “competitive matters” because it is related to the competitive activity of Austin Energy, and that, for the reasons including but not limited to those set out as to each matter, would provide advantage to competitors of Austin Energy if disclosed. The City Council authorizes the City Manager to determine which documents and other information are reasonably related to the matters set forth in Exhibit A and to seek to preserve their confidentiality through the procedures provided for by the Texas Public Information Act.
3. **REGULATORY REPORTING REQUIREMENTS:** Notwithstanding any provision of this resolution, information required to be reported to any governmental authority or ERCOT on a non-confidential basis shall not be deemed competitive and shall be made publically accessible by the City Manager contemporaneously with its filing with the governmental authority. Information filed on a confidential basis shall be made publically accessible by the City Manager when it ceases to be held on a confidential basis by the governmental authority.
4. **INDUSTRY PRACTICE:** The City Council is designating certain information as competitive only as necessary to establish a level playing field between Austin Energy and its competitors in the electric market. In some cases, privately-owned utilities or retail providers may file information with governmental authorities under filing requirements that do not apply to municipally-owned utilities such as Austin Energy. Therefore, even if information falls within a category designated as competitive in this resolution, the City Manager shall disclose it at comparable times and detail as do privately-owned utilities or retail providers in the ERCOT market. For example, such requirements may include material contract reporting required by the Securities and Exchange Commission (SEC), rate back-up

information required by the Public Utility Commission of Texas (PUCT), and other financial reporting required by the SEC.

5. **CASE-BY-CASE DETERMINATION:** Before seeking a determination from the Attorney General, the City Manager shall review each request for information that concerns a competitive matter to determine whether the specific information requested would not in fact materially harm the competitive position of the electric utility if disclosed, and, except for customer electric consumption, credit, and personal information, the City Manager shall release such information if it is determined the no material harm would result in the specific circumstance. In making the determination, the City Manager shall begin with a presumption that the information should be made public. If denying a request, the City Manager shall state the specific reasons for the denial and shall make a report of request denials to the Electric Utility Commission on a monthly basis. The Electric Utility Commission may make recommendations to the City Council regarding the merits of any denial and the contents of this resolution.
6. **SUNSET REVIEW:** The Electric Utility Commission shall review the contents of Exhibit A prior to expiration to determine whether amendments should be made to conform to industry or regulatory changes, and shall forward any recommended amendments to the City Council. This resolution shall expire two years after its adoption absent further action by Council.
7. **PUBLICATION AND AVAILABILITY OF INFORMATION:** The City Manager shall establish a standardized reporting process that makes information regarding the finances, operations, and plans of the electric utility available to the public both on-line and on paper, including:
  - a. **Standardized Reports:** The City Manager shall publish an annual report as provided in Exhibit B and publish the information set forth in Exhibit C as it may arise.
  - b. **Convenient Public Access:** The City Manager shall:
    - i. compile and provide convenient public access to public financial and operational information and information reported to governmental

authorities, including internet access by site index, word search, and public information portal;

- ii. continue efforts to identify, compile, and make readily available information that may be of recurrent interest to the public;
- iii. maintain on-line access to all current and historical regulatory, EUC, annual, and monthly reports at a single, readily-accessible location on Austin Energy's website, along with contact information for assistance in locating information;
- iv. maintain website links to regulatory agencies where information filed by Austin Energy can be found;
- v. make information available in a timely manner for public review before any public discussion at Commission or Council meetings.

c. **Information Requests:** The City Manager shall:

- i. implement a formal open records process at the electric utility so that all information is provided under a standard and documented procedure within the time limits required by the Texas Public Information Act;
- ii. provide on-line access to current and prior information requests concerning operational or financial matters of general interest, including the request and all documents provided in response or the denial response as applicable;
- iii. provide a dedicated resource to maintain the reporting required by this resolution, as well as provide assistance to citizens or customers in locating facts and identifying sources of information that may be responsive to the citizen's or customer's inquiry.

**EXHIBIT A**  
**COMPETITIVE MATTERS**

**1. Fuel and Wholesale Power Transactions:**

- a. Contract terms and prices for fuel (non-aggregated).
- b. Contract terms and prices for wholesale energy, capacity, or ancillary services purchases or sales (non-aggregated).
- c. Market intelligence, research, forecasts, and strategies pertaining to future fuel and wholesale power prices and purchases.
- d. Quantities of fuel in storage or reserve or under contract or option to purchase.
- e. Bids and offers for the purchase or sale of wholesale power
- f. Forecasts regarding fuel or purchase power needs.
- g. Fuel hedging instruments and transactions (including but not limited to swaps, put options, call options, and swaptions), quantities hedged, hedging price positions, and hedging plans and strategies.

Bilateral contracts for fuel and wholesale purchase power shall be available to the public 12 months after expiration of the contract. Information under (a) and (b) will be released sooner if required by regulatory requirements. Spot market purchase and sale prices shall be available on a historical basis 12 months after the date of purchase or sale. Information listed for (d) and (e) shall be available 12 months after the storage or transaction date, or sooner if required by regulatory requirements. Information listed for (f) shall be available upon expiration of the period covered by the forecast. Information under (g) shall be available 12 months after settlement of the instruments, transactions, or positions in question, or 12 months after expiration of the period covered by the plans or strategies contained in the document in question.

**2. Power Generation:**

- a. Unit-specific production cost information, heat rates, variable and fixed O&M costs, high and low capacity limits, ramp rates, minimum up and down times, start-up costs and related information.
- b. Planned maintenance and outage schedules.
- c. Land acquisitions for potential renewable energy generation facilities.

Information under (b) shall be available after the outage date. Transactions under (c) shall be available no later than public announcement of intent to construct the facility.

**3. Customer Information:**

- a. All electric customer information contained in the Austin Energy customer information system, including but not limited to customer names, addresses, other personally identifying information such as driver license and social security numbers, and credit and payment history.
- b. Electric customer consumption information.

- c. The identity of customers participating in Austin Energy funded programs.
- d. The identity of large or “key” accounts.
- e. Non-aggregated survey or study information regarding retail customers.
- f. Questionnaire, study, or survey response information that allows a respondent to be personally identified.
- g. Retail market and customer research data from secondary sources.

**4. Certain Employee Information:**

- a. Information contained in the Austin Energy Talent Management System with respect to current employees and which consists of existing skills and qualifications, analysis of existing skills and qualifications, and recommended or desired job placement within the organization. This exemption does not include employee salaries or benefits.

**5. District Cooling:**

- a. Contracts and pricing information for district cooling (chilled water) service.
- b. System-specific production cost information, including variable and fixed O&M costs.

Information under (a) shall be available after the expiration of the contract in question. The information under (b) shall be made available 24 months from the date in question.

**EXHIBIT B**  
**AUSTIN ENERGY ANNUAL PERFORMANCE REPORT**

Austin Energy shall publish a standard annual performance report to make information about Austin Energy readily available to the public, and also to provide data to indicate Austin energy's performance in meeting Council-established goals, including climate protection. The annual performance report shall be published both on-line and on paper. The report shall include categories such as:

- Annual and monthly description of customer base, system load, generation facilities, purchase power and energy efficiency programs
- Breakdown of revenue, expenditures, and fuel costs
- Average rates and bills for customer classes and residential energy burden
- Performance measures of the economic and environmental impacts of investments
- Customer service performance and targets and goals for low-income programs
- Economic impacts, including jobs creation, of demand-side management and distributed generation programs

The format and detailed content of the fiscal year 2010 report shall be determined by Austin Energy with input from the public and approved by the Electric Utility Commission (EUC) in June 2011. Austin Energy will thereafter update the report annually and provide additional information as may be approved by the EUC in February of each calendar year. Each year, Austin Energy shall issue its preliminary annual report not less than ten days before the EUC's June meeting for public review and comment, and shall issue a final report for review and approval at the EUC's July meeting.

## **EXHIBIT C**

### **INFORMATION RELATING TO GENERATION RESOURCE ACQUISITIONS**

If the City Manager seeks approval from the City Council of a purchase power contract, resource construction project, or plant purchase in excess of 10 megawatts, the following information shall always be made public with respect to such acquisition:

- A description of the type of resource; e.g., wind, solar, gas combined cycle, etc.
- Generation capacity(total megawatts)
- Expected technology and cost discussion – fixed, variable, and expected cost range
- Discussion of how the resource fits into the portfolio; base load, peaking, or intermittent
- Expected date for energy to be available
- Expected timing and impact to resource plan and affordability goals
- Update on existing pending resource acquisitions
- Current energy efficiency offsets achieved since 2007
- Current renewable energy split between Green Choice & fuel charge
- Update and status of federal or state environmental legislation
- Overview of resource(s) being sought
- Discussion and cost for possible alternatives to the acquisition
- Impact on affordability and Resource Plan goals – Renewable and energy efficiency targets, carbon, affordability, and bill impacts

For resources acquired by competitive solicitation, the information set forth above shall be made available prior to the issuance of the solicitation. If a competitive solicitation is not issued prior to the acquisition, the information shall be made available 30 days prior to formal public discussion of the acquisition. All resource acquisitions above 10MW shall, at a minimum, be presented for approval before the Electric Utility Commission (and, with respect to renewable resources, the Resource Management Commission), and shall not be placed on a City Council agenda for action unless the matter has been presented at a previous City Council meeting for briefing and public comment.